



IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

CHARLES JOHNSON

PLAINTIFF

VS.

CAUSE NO. 3:12CV0576/HTW-LRA

TYRONE LEWIS, SHERIFF,
IN HIS OFFICIAL CAPACITY
(as successor to Malcolm McMillin, Sheriff);
HINDS COUNTY, MISSISSIPPI (HINDS COUNTY
SHERIFF'S DEPARTMENT); AND
DOE DEFENDANTS 1-5

DEFENDANTS

NOTICE OF REMOVAL

COMES NOW, Hinds County Sheriff Tyrone Lewis, defendant in the above-captioned litigation filed by Plaintiff, Charles Johnson, which is currently pending before the Circuit Court of Hinds County, Mississippi, First Judicial District, bearing cause number 251-12-609 CIV, and files this, his Notice of Removal of the state court action to the United States District Court for the Southern District of Mississippi, Jackson Division. In support thereof, this Defendant would show the Court the following:

1) In support of this Notice of Removal, this Defendant asserts jurisdiction pursuant to 28 U.S.C. § 1331, federal question jurisdiction, as the basis for the United States District Court's original jurisdiction over this action, and removal is made pursuant to the provisions of 28 U.S.C. § 1441, *et seq.*

2) This civil action was filed in the Circuit Court of Hinds County, Mississippi, First Judicial District, bearing civil action number 251-12-609 CIV, on July 24, 2012. Pursuant to L.U. Civ. R. 5(b)(1) & (2), the entire state court record is attached hereto as **Exhibit A**. The Complaint names Hinds County Sheriff Tyrone Lewis (in his official capacity as successor to

Sheriff Malcolm McMillin), Hinds County, Mississippi (Hinds County Sheriff's Department) and John Does 1-5 as defendants.

3) The naming of Tyrone Lewis as a defendant in his official capacity as Sheriff of Hinds County, Mississippi, is tantamount to the naming of Hinds County, Mississippi as a defendant in this matter. See *Brandon v. Holt*, 469 U.S. 464, 471-72, 105 S. Ct. 873, 83 L. Ed. 2d 878 (1985). Hinds County, Mississippi has not yet been served in this matter and specifically asserts that it does not waive any of its defenses contained within Fed.R.Civ.P. 12 (b)(1)-(7), nor its right to be properly served by filing this Notice of Removal. This Notice of Removal is being filed out of an abundance of caution as Sheriff Tyrone Lewis was served with summons on August 2, 2012. **See Exhibit B.**

4) This Notice of Removal is being filed within thirty (30) days of receipt by Sheriff Tyrone Lewis of a copy of the Plaintiff's Complaint, which sets forth claims for relief upon which the state court proceeding is based as per as per 28 U.S.C. § 1446 and Fed. R. Civ. P. 6(a)(3).

5) According to 28 U.S.C. § 1441(a), the United States District Court for the Southern District of Mississippi, Jackson Division, is the Federal District Court for the district and division embracing the place where the subject state court suit is pending.

6) This Court has subject matter jurisdiction over the present action pursuant to 28 U.S.C. § 1331 and § 1441. The Plaintiff has made assertions of violations of his Fourth, Fifth, Eighth and Fourteenth Amendment Rights pursuant to the procedural vehicle of 42 U.S.C. § 1983, thereby creating a federal question as contemplated under 28 U.S.C. § 1331. This federal question existed at the time of service of the Complaint upon Sheriff Tyrone Lewis, as well as at the time of removal.

7) Pursuant to FED. R. CIV. P. 11, the undersigned counsel certifies that she has read the foregoing Notice of Removal and that, to the best of her knowledge, information, and belief formed after reasonable inquiry, it is well-grounded in fact and is warranted by existing law and/or good faith argument for the extension, modification, or reversal of existing law, that it is not interposed for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation.

8) Pursuant to 28 U.S.C. § 1446(d), Tyrone Lewis will give written notice of the filing of this Notice of Removal to the Plaintiff, and a true and correct copy of this Notice will be duly filed with the Circuit Court of Hinds County, Mississippi.

WHEREFORE, Defendant Sheriff Tyrone Lewis removes the above-entitled case from the state court to this Court.

RESPECTFULLY SUBMITTED, this 10th day of August, 2012.

SHERIFF TYRONE LEWIS,
Defendant

BY: Michelle T. High
Michelle T. High

OF COUNSEL:

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